THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

DATED: 27-07-2006

W.P.NO.11548 OF 2006

Between:

The Govt. of A.P. rep.by its
Pr. Secretary to Govt.Energy, Forest,
Science and Technology, Department and
another .. Petitioners

And

Sri T. Venu Babu, Forest Range Officer,
Khanapur, Adilabad District.

.. Respondent

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.11548 OF 2006

ORDER: **(PER RR,J)**

Aggrieved by the order of the A.P. Administrative Tribunal in O.A.No.6365 of 2005, dated 05.12.2005 whereby the order of punishment of compulsory retirement, passed by the petitioners herein against the respondent-applicant, was set aside on the ground that the disciplinary authority had abdicated its power in favour of the Vigilance Commission, had acted pursuant to and in furtherance of the advice of the Vigilance Commission and that no independent decision had been taken by the disciplinary authority in this regard as he had earlier proposed to impose the punishment of withholding of one annual grade increment with cumulative effect without effect on pension, the present writ petition is filed.

2. The Tribunal, in its order in O.A.No.6365 of 2005 dated 05.12.2004, examined the correspondence between the disciplinary authority and the petitioners herein, and the averments in this regard in the counter affidavit filed on behalf of the petitioners herein, and framed a question as to whether the impugned order of punishment of compulsory retirement had been issued pursuant to the mandate/influence of the Vigilance Commissioner and whether it was valid and legal.

3. The Tribunal, following the judgment of the Apex Court in **NAGARAJ SHIVARAO KARJAGI v SYNDICATE BANK HEAD OFFICER MANIPAL AND ANOTHER**[1] and upon taking note of the correspondence between the disciplinary authority and the Principal Secretary to Government wherein the disciplinary authority had, (despite the advise of the Vigilance Commission),

expressed its opinion that withholding of one annual grade increment with cumulative effect without effect on pension should be imposed, held that the order of punishment issued against the respondent-applicant, vide proceedings dated 28.09.2005, was influenced by the mandate of the Vigilance Commission and the disciplinary authority had, therefore, abdicated its powers at the instance of the Vigilance Commission. In view of the law laid by the Apex Court in **Karjagi**[1], the Tribunal held that the action of the petitioners was bad in law.

4. Before us, the learned Government Pleader for Services-I submits that while it is true that the Vigilance Commission had recommended imposition of punishment of compulsory retirement, the disciplinary authority had taken an independent view of the matter and though earlier he intended to impose punishment of withholding of one annual grade increment with cumulative effect, the impugned order would show that the disciplinary authority had taken an independent decision and had decided to impose the order of compulsory retirement on the respondent-applicant. He further submits that since the disciplinary authority had exercised its mind independently, even if the Vigilance Commission had tendered its advise to the disciplinary authority, it is not open for this Court or the Tribunal to interfere with the order of punishment imposed in such matters. According to the learned Government Pleader, the Tribunal had erred in coming to the conclusion that the disciplinary authority had abdicated its powers and had acted on the advise of the Vigilance Commission. Learned Government Pleader further submits that even if the order of the disciplinary authority, imposing on the respondent the punishment of compulsory retirement, was required to be set aside by the

Tribunal on the ground that the disciplinary authority had abdicated its functions, it was not open for the Tribunal to dictate the manner in which the punishment should be imposed or to hold that the earlier proposed punishment of stoppage of one annual grade increment with cumulative effect should be the punishment. According to the learned Government Pleader once an order of punishment is set aside, the Tribunal ought to have left it open to the disciplinary authority to exercise its mind independently and take a decision on the punishment to be imposed, on the respondent-applicant, for proved misconduct.

5. Sri Nooty Ram Mohan Rao, learned counsel appearing on behalf of Sri P. Naveen Rao, learned counsel for the respondent-applicant, would refer to the letter addressed by the Disciplinary authority to the Principal Secretary to Government dated 12.03.2005 wherein, while taking note of the advise of the Vigilance Commission, the disciplinary authority had observed that the punishment proposed by the Government at the instance of the Vigilance commission for compulsory retirement of the respondent from service, appeared to be very heavy, particularly in view of the fact that there was no misappropriation of Government funds. The disciplinary authority requested the Government to impose the penalty of withholding of one annual grade increment with cumulative effect with effect on pension as recommended by him in his earlier letter dated 20.05.2004.

6. The Government, however, in its Memo dated 05.09.2005, enclosed the report of the A.P. Vigilance Commission dated 19.7.2005 to the disciplinary authority to take necessary action in accordance with the advise tendered by the A.P. Vigilance Commission. Enclosed to the memo dated 5.9.2005 was a letter addressed by the A.P. Vigilance Commission on 19.7.2005

wherein the Vigilance Commission had advised that the punishment of compulsory retirement be imposed.

7. Sri N.Ramamohan Rao, learned counsel for the respondent-applicant relies on a Judgment of the Division Bench of this Court in **MUBASHIR HUSSAIN v COMMISSIONER OF CENTRAL EXCISE-III, HYDERABAD AND OTHERS**[2] in support of his submission that where the disciplinary authority acts on the advise of and at the behest of the Vigilance Commission, the order of punishment is vitiated on the ground that the disciplinary authority had abdicated its powers.

8. The evidence on record establishes that the impugned order of punishment of compulsory retirement was passed by the disciplinary authority on the orders of the Government which in turn was swayed by the advise tendered by the A.P. Vigilance Commission. The disciplinary authority did not exercise its powers independently while imposing the punishment of compulsory retirement on the respondent-applicant. It is well settled that this Court, while exercising its certiorari jurisdiction, would neither sit in appeal nor reappreciate the evidence to substitute its findings for that of the Tribunal. The order of the Tribunal holding that the disciplinary authority had abdicated its functions entirely and had passed the order at the behest of the Vigilance Commission does not call for interference.

9. In **MUBASHIR HUSSAIN.**2 a Division Bench of this Court observed thus:

> *"…….. The disciplinary authority, therefore, was of the firm opinion that no further penalty should be imposed. We have, therefore, no doubt in our mind that the impugned order of punishment had been issued at the instance of the Central Vigilance Commission only. The CVC may have*

certain role to play in a departmental proceeding but there cannot be any doubt whatsoever that it cannot be permitted to usurp the role of the disciplinary authority. No administrative action is sustainable where the disciplinary authority had acted pursuant to or in furtherance of any advice or direction issued by any other authority who has no role to play under any statute.

From the records, it appears that not only the proceedings were initiated at the instance of the CVC but, as noticed hereinbefore, despite the fact that the disciplinary authority had come to a conclusion to the effect that the petitioner should not be imposed with any punishment, the authority inflicted the aforesaid punishment only at the instance of the CVC. Such abdication of power by the disciplinary authority cannot be countenanced.

. In S.B.I v. H.K.Dogra,(1995(5)SLR(358) the Punjab and Haryana High Court held that the opinion of the CVC is purely advisory in nature and it cannot act as an appellate authority. Yet again in SP Agarwal V Municipal Corporation Delhi (1997(1)SLR485) the Delhi High Court has clearly held that the advice of the CVC is not binding on the disciplinary authority and it has to apply its own mind independently and arrive at an independent finding appreciating the facts and evidence on record. Even non-consultation with the CVC would not vitiate the disciplinary proceeding. (See State of S.P. V. Dr. Rahimuddin Ramal (1997(3) SCC 505). It may be one thing to say that a disciplinary authority takes into consideration the advice of CVC while issuing an order of punishment on the basis of the materials placed before it and upon application of its won mind, but, it is another thing to say that it abdicates its statutory power to the CVC and pass an order of punishment although in its opinion no punishment should be imposed on the delinquent officer. The instant case is a glaring example where the disciplinary authority had abdicated its power in favour of the CVC and acted pursuant to or in furtherance of the advice of the CVC.

In the aforesaid situation, the disciplinary authority must be held to have committed a jurisdictional error in passing the order. (see Anisminic Ltd. V. Foreign Compensation Commission (1969 (2)AC 147). The impugned order, therefore, cannot be sustained……"

10. The law laid down by the Apex Court **NAGARAJ SHIVARAO KARJAGI**1 and the Division Bench of this Court in **Mubashir Hussain**[2] is that, where the order of punishment is imposed by the disciplinary authority at the behest of and at the dictates of the Vigilance Commission, such an order is vitiated on the ground that the disciplinary authority had abdicated its powers and had failed to apply its mind independently to the facts and circumstances of the case. The order of the Tribunal, setting aside the order of punishment imposed by the disciplinary authority, does not call for interference.

11. The other submission of the learned Government Pleader is, in our view, justified. Once the order of punishment passed without independent application of mind is set aside, it is not open either to the Tribunal or for this Court under Article 226 of the Constitution of India, normally, to either impose a punishment which it considers appropriate or to direct the manner in which the disciplinary authority should exercise its powers with regards imposition of punishment.

12. In such circumstances, while setting aside the order of punishment, the matter should have been left open to the disciplinary authority to apply his mind independently, to the facts and circumstances of the case, and pass an appropriate order of punishment in accordance with the applicable rules and without being influenced by the advice tendered by the Vigilance Commission. The Tribunal had acted in excess of its jurisdiction in directing that the punishment decided earlier by the disciplinary authority, of withholding one annual grade increment with cumulative effect without effect on pension, should be taken as the

punishment imposed against the respondent. That portion of the order of the Tribunal is, therefore, set aside.

13. The writ petition is allowed in part to the extent indicated above. It is open to the disciplinary authority to exercise its powers independently, on the facts and circumstances of the case, and decide the appropriate punishment to be imposed on the respondent-applicant herein. No costs.

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B.PRAKASH RAO,J

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RAMESH RANGANATHAN,J

Dated: 27-07-2006
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[1] 1991(2) SLR 784

[2] 2004(7)ALT 289(D.B)